# RECENT IMPORTANT DECISIONS

ADMIRALTY—LIABILITY OF PUBLIC CORPORATION FOR TORT.—In a proceeding by libel in personam instituted by the United States to recover for injuries sustained by a lighthouse tender in a collision with a tug and dredge owned by defendant, the collision having occurred through the negligent management of the tug and dredge, it was *held* that the defendant was liable. *United States* v. *Port of Portland* (1906), — D. C. D., Ore. —, 147 Fed. Rep. 865.

The defendant is a public corporation created by the State of Oregon, its purpose and the object of its creation being very clear from the following extract from the opinion of Mr. JUSTICE BEAN in *Cook* v. *Port of Portland*, 20 Ore. 580, 27 Pac. 263, 13 L. R. A. 533: "The purposes and powers of the Port of Portland are all public, political, or governmental. It possesses none of the features of a private corporation. * * * The sole object of the corporation is to so improve the Willamette and Columbia rivers at the city of Portland and between that point and the sea as to create and maintain a ship channel of a specified depth, and for these purposes it is given full power over these rivers, so far as the state can grant the same. There is no power to take tolls or make profit of any kind. No private interests of any kind are granted or acquired. * * * The only powers conferred upon the Port of Portland, except the necessary incidental powers of holding the property and making the contracts necessary to carry out the main purpose, are the control and improvement of this public highway and the levy and collection of taxes therefor. The Port of Portland and the commissioners who exercise its powers are nothing more than the agents of the state delegated to exercise one of its highest prerogatives, the taxing power, in carrying out one of its best known and recognized and most important duties, the improvement of a great and important public highway." This being the nature of the corporation, there would seem to be little doubt that it is not, according to the rule of the common law, liable for torts. ABBOTT, MUNIC. CORPS., § 955 (a). But the rule in admiralty as declared by *Workman* v. *Mayor, etc., of New York*, 179 U. S. 552, seems to be otherwise, and upon that case the court in the principal case relied. In the *Workman* case the Supreme Court of the United States, four of the justices dissenting, held the city of New York liable for damage done by the negligent operation of a fire boat belonging to the city fire department while it was on its way to fight a fire, the court holding that such was the rule of the maritime law regardless of what the rule might be in courts other than those of admiralty. In the prevailing and dissenting opinions may be found reference to practically all the authorities bearing upon the subject, the majority basing their conclusion principally upon the English cases, *Mersey Docks and Harbour Board, Trustees,* v. *Gibbs* (1866), L. R. 1 H. L. 122; *Currie* v. *McKnight* [1897], A. C. 97; *The Athol* (1842), 1 Wm. Rob. 374; and the American cases, *The Siren*, 7 Wall. 153, and *The Clarita*, 23 Wall. 1, as announcing the rule of maritime law, and then following the theory that the rule of maritime law must be uniform everywhere. The minority, speaking by Mr. JUSTICE

GRAY, on the other hand, in what appears to be the better reasoned and more logical opinion, reach the conclusion that unless, according to the law prevailing throughout the country upon a cause of action, an action at law can be maintained, no libel in admiralty will lie, and relying, among others, upon *The Albert Dumois,* 177 U. S. 240, 259; *The Corsair,* 145 U. S. 335; *The Alaska,* 130 U. S. 201; *The Harrisburg,* 119 U. S. 199, 213. Previous to the bringing of the libel in the principal case the libellant had filed a libel in rem which was dismissed on the ground that property of a municipal corporation used in the public service cannot be seized to satisfy a claim for damages arising out of a maritime tort. *The John McCracken,* 145 Fed. Rep. 705. The case is a striking example of the difference in the rules of maritime and common law upon the same point.

BANKRUPTCY—BILLS AND NOTES—DISCHARGE OF INDORSER.—The plaintiff held a promissory note on which the defendants were accommodation indorsers. By a collateral agreement the maker was entitled to pay off the note at any time before maturity and obtain a discount. The maker paid the note and within a few days a petition in bankruptcy was filed against him. The trustee in bankruptcy recovered the amount paid by the maker to the plaintiff on the ground that it constituted a preference. The holder of the note now seeks to recover the amount from the indorsers. *Held,* that payment by the maker under the circumstances did not discharge the indorsers from their liability. *Second National Bank* v. *Prewett* (1906), — Tenn. —, 96 S. W. Rep. 334.

The defendants insist that when the plaintiff accepted payment from the maker with a knowledge of his insolvency the indorsers were relieved from their liability, and rely on the cases of *Harris* v. *Bank,* 110 Tenn. 239, and *Bartholow* v. *Bean,* 18 Wall. (U. S.) 635, 21 L. Ed. 866, as sustaining them in this position. The former, however, had no bearing on the question involved in the present case, while, in the latter, what was said about the indorser being discharged was mere dictum since that question was not before the court. This question seems not to have been fairly presented in any reported case, but in *Watson* v. *Poague,* 42 Ia. 582, the plaintiff held a note executed by Wood, Poague and Griffith jointly. Griffith paid part on the note and was soon afterward adjudged a bankrupt. The trustee in bankruptcy recovered from the plaintiff the amount so paid. The plaintiff was then allowed to recover from the other two makers the amount he lost In *Pritchard* v. *Hitchcock,* 6 Mon. & G. 151, plaintiff lent William Hitchcock a sum of money, payment of which was guaranteed by defendant. William paid the amount but was later adjudged a bankrupt, so that plaintiff was compelled to return it, and he was allowed to recover the amount from the guarantor. In *Petty* v. *Cooke,* L. R. 6 Q. B. 789, the facts were similar to those in the case under discussion, except the holder had no knowledge of the maker's insolvency when he received payment. He was allowed to recover. The plaintiff in the present case was in a position where he was obliged to accept payment, even if he knew the maker was insolvent, or lose his right against the indorser since if he refused payment when tendered, the indorser would be released.